IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 294 OF 2005

Shri Nanaji @ Nanji Mavji
Waghela. ... Appellant.

V/s.

The Airport Authority of
India and others. ... Respondents.

M.S.Menon for the appellant.

Mr.Pravin Samdani i/b. M/s.Dadhich & Co.
for respondent No.1.

Mr.Kalpesh Joshi i/b. M/s.Malvi Ranchoddas
for respondent Nos.2 and 3.

Mr.T.Subramaniyam for respondent No.4.

CORAM : A.S.Oka, J.

DATED : 7th March, 2005.

P.C. :

. Heard the learned counsel appearing for the parties.

2. By the impugned order the learned trial Judge has declined to grant equitable relief of temporary injunction in favour of the Appellant-Plaintiff.

3. Perusal of the plaint shows that the Appellant is claiming declaration that he has become owner of the suit land by adverse possession. Shri

Menon, learned counsel appearing for the Appellant submits that according to the Plaintiff on the date of the suit one Miskita was the real owner of the suit land and the Respondent No.1 was claiming to be owner on the basis of the alleged acquisition proceeding of which the Appellant has no knowledge and notice. If the Plaintiff comes to the Court for declaration of ownership on the ground that he has perfected his title by adverse possession, the person who, according to the Plaintiff, was a real owner is a necessary and proper party to the suit. Apart from this fact, there is no pleading in the plaint which can show that the alleged possession of the Appellant over the suit land was hostile to the knowledge of the real owner.

4. In the impugned order, the learned trial Judge noted that the submission was made on behalf of the Appellant that notification under section 4 of the Land Acquisition Act, 1894 was issued on 25th August 1947 and no notice was served on the Plaintiff. The said submission is noted in paragraph-9 of the impugned order. In the plaint in paragraph-2 it is stated that the Appellant started cultivation in the year 1960.

5. Obviously, there is no prima facie evidence of title of the Appellant in respect of the suit land. Prima facie it appears that the Appellant is

not in possession of the suit land and the suit for declaration and possession is filed on the ground that the Appellant has perfected his title by adverse possession. As there was no prima facie case made out by the Appellant the learned trial Judge was justified in declining to grant interim relief.

6. The grant of interim relief of temporary injunction is purely discretionary. Unless the discretion is shown to have been exercised arbitrarily or contrary to the settled principles of law, the Appeal from Order under order 43 rule 1(r) of Code of Civil Procedure, 1908 cannot be entertained.

7. Hence there is no merit in the Appeal and the same is dismissed with no order as to costs.

8. It is, however, made clear that all further actions of the Respondents are naturally subject to the final decree in the suit.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 200 OF 2005
IN
APPEAL FROM ORDER NO. 294 OF 2005

Shri Nanaji @ Nanji Mavji
Waghela. ... Appellant.

V/s.

The Airport Authority of
India and others. ... Respondents.

M.S.Menon for the appellant.

Mr.Pravin Samdani i/b. M/s.Dadhich & Co.
for respondent No.1.

Mr.Kalpesh Joshi i/b. M/s.Malvi Ranchoddas
for respondent Nos.2 and 3.

Mr.T.Subramaniyam for respondent No.4.

CORAM : A.S.Oka, J.

DATED : 7th March, 2005.

P.C. :

. In view of dismissal of the Appeal, this Civil Application does not survive. The Civil Application is rejected.

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